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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/721,512 | 11/22/2000 | Norbert Wolters | 08876-US | 2610 |

7590

11/15/2002

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EXAMINER

MAMMEN, NATHAN SCOTT

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 11/15/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/721,512

Applicant(s)

WOLTERS ET AL.

Examiner

Nathan S Mammen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 September 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Response to Arguments

1. In view of the appeal brief filed on September 3, 2002, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5, 7, 9, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by WO 99/03323, cited by Applicant.

The WO 99/03323 publication discloses a feeding and picking device for feeding and picking a standing crop. The device comprises a rotating feeding device (18, 19) having a feeding radius. The feeding element grasp plant stalks and directs the plant stalks to a picking device (10, 11) which separates useable plant from the plant stalks. The device also comprises a

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chopping device (22) that chops the plant stalks. The chopping device has a radius (21) that overlaps the feeding radius of the feeding element.

Regarding claims 2, 3, 5, 7, 9, 10: The feeding element (18) acts as a counter-knife to the chopping device by holding the stalks with fingers (20). The chopping radius (21) extends throughout the length of the picking device. The chopping device (22) has a chopping axis and the feeding device (18, 19) has a feeding axis and these axes correspond in that they overlap. The feeding element (18, 19) is provided with an upper feeding element (at the downstream end of the feeding element) which is mounted above the picking device. The feeding element is also provided with an lower feeding element (at the upstream end of the feeding element), and the chopping device and at least one chopping knife (22) are located between the upper and lower feeding elements. The upper and lower feeding elements are designed to transport the grasped plants through the length of the picking device.

4. Claims 1, 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Decoene (U.S. Patent 4,236,369).

The Decoene '369 patent discloses a feeding and picking device for feeding and picking a standing agricultural crop. The device comprises a rotating feeding device (48) having a feeding radius (i.e., the circumference which defines the radius of action). The rotating feeding element grasp plant stalks and directs the plant stalks to the picking device (3) which separates the useable parts from the plant stalks (i.e., the bottom, root-portion of the plant stalks). A chopping device (50) chops the plant stalks. The chopping device has a chopping radius (i.e., the circumference) that overlaps the feeding radius of the feeding device. The chopping and feeding axes correspond to one another.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 4 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/03323, cited by Applicant.

The WO 99/03323 publication discloses the claimed invention, as stated in paragraph 5 above, except for the chopping radius extending upstream of the picking device and the feeding element having a feeding element mounted beneath the chopping device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the chopping radius extending upstream of the picking device and the feeding element have a feeding element mounted beneath the chopping device, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

7. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/03323 in view of AT 301234, both cited by Applicant.

The WO 99/03323 publication discloses the claimed invention, as stated in paragraph 5 above, except for the chopping device being mounted at the rear end of the picking device. The AT 301234 patent teaches that it is known in the art to provide a chopping device mounted at the rear end of a picking device. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the feeding and picking device of the WO 99/03323 publication with the chopping device mounted at the rear end of the picking device, as taught by

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the AT 301234 patent, in order to provide an alternative mounting location for the chopping device.

8. Claims 11-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/03323, cited by Applicant, in view of Herron et al. (U.S. Patent 6,032,444).

The WO 99/03323 publication discloses the feeding and picking device, as stated in paragraph 5 above, except for the feeding and picking device having an upper surface with a leading surface with a rejecting transporting action and a trailing surface with an aggressive transporting action.

The Herron '444 patent teaches an alternative rotating crop feeding element. The feeding element includes an upper surface having a leading surface (96, 98) with a rejecting transporting action and a trailing surface (100) with an aggressive transporting action. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the feeding and picking device of the WO 99/03323 publication with the feeding element of the Herron '444 patent, in order to provide an alternative feeding element to improve crop flow (Herron – col. 7, lines 12-32).

Regarding claims 12-13: The chopping axis of the WO 99/03323 publication, as well as the Herron '444 patent, is substantially vertical and approximately parallel to the feeding axis.

Regarding claims 14-15: It would be an obvious matter of design choice to rotate the feeding element and chopping device in identical or opposite directions.

Regarding claim 16-17: The chopping knife of the WO 99/03323 publication has front and rear cutting edges and is rigidly mounted to the chopping device.

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Regarding claims 18-20: It would have been an obvious matter of design choice to suspend the chopping device so that it oscillates and to provide the chopping device with a smooth edge knife or a splicing knife.

9. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over WO 99/03323, cited by Applicant, in view of Miller (U.S. Patent 4,148,175).

The WO 99/03323 publication discloses the feeding and picking device, as stated in paragraph 5 above, except for the feeding and picking device having a guiding mechanism for depositing the chopped plant material in the form of a windrow. The Miller '175 patent teaches that it is known in the art to provide a guiding mechanism to deposit stalks in the form of a windrow after picking the useable parts. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the feeding and picking device of the WO 99/03323 publication with the windrow forming guiding mechanism of the Miller '175 patent, in order to leave the stalks in a windrow where they can be easily picked up and utilized (Miller - col. 1, lines 16-17).

Response to Arguments (cont.)

10. On page 6, lines 33 and 34, the specification of the instant application states that "[t]he fingers 44 and 46 define the radius of action of the feeding elements 14 and 16." The specification includes no other definition or reference to feeding radius, thus the "feeding radius" of claim 1 necessarily is the "radius of action" of the feeding elements. This "radius of action" parallels Webster's Collegiate Dictionary's definition of radius as "c: a bounded or circumscribed area." In view of Applicant's definition of feeding radius, the rotating feeding device of the WO 99/03323 publication clearly overlaps with the chopping radius, since the

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feeding radius is defined as the radius of action of the feeding elements, i.e., the area bounded or circumscribed by the feeding elements.

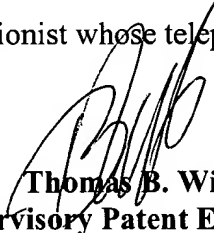
Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan Mammen whose telephone number is (703) 306-5959. The examiner can normally be reached Monday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached at (703) 308-3870. The fax number for this Group is (703) 305-3579.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

NSM
11/12/02

Nathan S. Mammen